

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

HORACE FRIEND and TERESITA FRIEND,

Plaintiffs,

v.

HON. ROBERT N. KWAN, *et al.*,

Defendants.

Cause No. C21-5663RSL

ORDER OF DISMISSAL

This matter comes before the Court on defendant “Mortgage Electronic Registration Systems, Inc.’s Motion to Dismiss.” Dkt. # 31. Plaintiffs allege that the Honorable Robert N. Kwan, a United States Bankruptcy Judge in the Central District of California, allowed defendant MERS to foreclose on their mortgage based on the presentation of “improper and fraudulent documents.” Dkt. # 1-1 at 3. In particular, plaintiffs allege that they did not sign the underlying Deed of Trust and that a related Adjustable Rate Rider contained a fraudulent notary signature. *Id.*¹ MERS seeks dismissal of the claims asserted against it under the doctrines of *res judicata* and collateral attack. MERS requests that the Court take judicial notice of the proceedings in plaintiffs’ bankruptcy case and of an order dismissing a prior cause of action against non-MERS

¹ To the extent plaintiff asserted claims against Judge Kwan and other federal defendants based on the decision to release the property from the bankruptcy stay, those claims have been dismissed. Dkt. # 14.

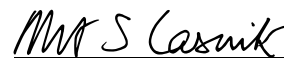
1 entities in which plaintiffs alleged that defendants were attempting to enforce “bad” loan
2 documentation. Dkt. # 32-1 at 7.

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4 Plaintiffs have not opposed the motion to dismiss or the request for judicial notice.
5 Nevertheless, MERS has not shown that the claims asserted against it are barred by the collateral
6 attack doctrine. Although most of the allegations of the original and amended complaints take
7 issue with the decision to lift the bankruptcy stay and allow the foreclosure to proceed, reading
8 the allegations in the light most favorable to plaintiff suggests that they may be asserting a claim
9 against MERS based on alleged defects in the notarization of the underlying mortgage
10 documents. Plaintiffs argue that these defects invalidated the mortgage and made the subsequent
11 foreclosure illegal. A challenge to the legal sufficiency of the documents on which the
12 foreclosure was based is not an attack on Judge Kwan’s decision to lift the bankruptcy stay.
13 Such a claim is, however, barred by the doctrine of *res judicata*. Plaintiffs previously asserted
14 their improper notarization claim before the Honorable David O. Carter, United States District
15 Judge for the Central District of California, and demanded that “the mortgage on their property
16 [be rescinded] due to ‘bad’ documentation presented by Defendants.” *Friend v. Executive*
17 *Financial Home Loan Corp.*, SACV 09-0457DOC (C.D. Cal), Dkt. # 74 at 6-7 (Third Amended
18 Complaint). That claim was dismissed with prejudice (Dkt. # 32-1) and cannot be revived here.²
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27 ² That MERS was not named as a defendant in the earlier litigation does not preclude it from
28 asserting a *res judicata* or collateral estoppel defense. *Clark v. Watchie*, 513 F.2d 994, 997 (9th Cir.
1975).

1 For all of the foregoing reasons, MERS' motion to dismiss (Dkt. # 31) is GRANTED.
2 The Clerk of Court is directed to enter judgment in favor of defendants and against plaintiffs.
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5 Dated this 18th day of July, 2022.
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9 Robert S. Lasnik
10 United States District Judge
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